MONTANA LEGISLATIVE HISTORY

Chapter 454 19 77

Bill H 960 S _____ Original bill & history ____C

H. Committee on Business & Industry			S. Committee on Business & Industry		
Hearing Date(s)	Feb 14	✓ C	Hearing Date(s)	Mar 08	✓ C
		____C		Mar 15	✓ C
		____C			____C
		____C			____C
Date Out	Feb 14	✓ C		Mar 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 760

INTRODUCED BY Ellison Cox

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE PROTECTION OF PERSONS DEALING WITH CEMETERY OR MAUSOLEUM-COLUMBARIUM CORPORATIONS AND TO INSURE THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS BY THOSE CORPORATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Bond required of cemetery and mausoleum-columbarium corporations. (1) Each association organized for any purpose for which an association may be formed under Title 9, chapter 1, or Title 9, chapters 5 through 10, and transacting business in Montana shall file a bond with the secretary of state in the amount of $15,000 to assure the full and timely performance of its contractual obligations including but not limited to:

(a) delivery of caskets, urns, monuments, and other merchandise;

(b) provision of vaults or tombs;

(c) inurnment, entombment, or interment of remains;

(d) care, maintenance, or improvement of plots, tombs, urn gardens, or other structures or grounds used for the disposition of human remains; and

(e) the proper management and preservation of all funds entrusted to it.

(2) Any person injured or aggrieved by the failure to fulfill such obligations may bring suit on the bond in person or by his duly appointed representative.

(3) The secretary of state may charge and collect a fee of $10 for receiving and recording the bond.

(4) If for any reason the bond is cancelled, invalidated, or diminished, all powers and privileges granted to the association as an entity by the state of Montana are suspended until the bond is fully reinstated. However, the suspension does not affect the rights of persons who deal with such association, in good faith and without notice of the suspension, during the period of suspension.

-End-

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Montana.

Ms. Jo Driscoll testified as a opponent (testimony attached).

Mr. Pratt answered questions on the policy. If a person died and the body was never found, or if the person simply died; the beneficiary would respect the wish in which the policy states.

House Bill No. 764 was discussed. Rep. Ramirez, sponsor, gave an explanation of the bill. He stated that the 1955 law has been ignored statewide. It would let the cities do the licensing.

There were no proponents or opponents.

Rep. Ellison asked if the clerks had to be bonded. Rep. Ramirez responded by saying the auctioneer was the only one who needed to be bonded. He stated he did not see anything wrong with the clerk being bonded.

Rep. Ellison stated a case in which a truck was sold at an auction and the man did not pay for it. The burden then would be on the auctioneer, therefore, the clerk should be bonded.

House Bill No. 760 was discussed. Rep. Ellison, sponsor, gave an explanation of the bill. He gave a bizarre incident in Livingston in which 30 bodies were taken out of the mausoleum. This goes back in history of this cemetery where the first owner died and it was sold to another man. The cemetery was in ordinary financial order, but this man bought four or five cemeteries in the state, sold the vaults and markers then pocketed the money. He bought a ticket to South America. This bill would provide surity bonds so there would be some assurance of timely performance of contractual obligations. The insurance companies would then have the incentive to track these people down.

Mr. Gary Marks stated that the bill would provide protection for people against anyone who is not intending to live up to his obligations. Mr. Harold Adams concurred in Mr. Marks' testimony.

The committee then went into executive session.

Rep. Harper moved to TABLE House Bill No. 31. The motion carried unanimously.

Rep. Tower moved that House Bill No. 535 DO PASS. The motion carried with all members present voting yes.

Rep. Fabrega moved that House Bill No. 384 DO PASS. The motion passed unanimously.

Rep. Kenny moved that House Bill No. 520 DO NOT PASS. Rep. Fagg made a substitute motion to defer action until Wednesday. The committee concurred in the substitute motion.

Rep. Fagg moved that House Bill No. 764 DO PASS. Rep. Metcalf asked the committee to defer action until Wednesday.

Rep. Metcalf moved to amend page 1, lines 23 through 25 on House Bill No. 760 by striking lines 23 through 25 and inserting "surety". The amendments were accepted. Rep. Ellison moved that House Bill No. 760 DO PASS AS AMENDED. The motion carried unanimously.

There being no further business, the meeting adjourned at 11:30 a.m.

JOHN C. VINCENT, Chairman

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CONSIDERATION OF HOUSE BILL 760: Representative Orval Ellison, chief sponsor of the bill, testified that most of the Senators would be familiar with the scandal in the private cemetary in Livingston. This is not the first problem that has arisen in private cemetaries, however. Five other private cemetaries in the state have had similar problems with the misuse of the vault and markers trust fund. Representative Ellison said that this bill does not purport to correct all of the short comings of the cemetary law, but it will set up surety bonds on the owners of the cemetaries.

Representative Ellison referred to page 2, line 10 of the bill which states that if the surety bond is cancelled, all powers, etc., are dispended until the bond is reinstated. A reporting method is needed to keep track of the owners of the cemetaries, but this bill will solve some of the problems until the cemetary laws are completely rewritten.

QUESTIONS & COMMITTEE DISCUSSION: Senator Lowe asked how much a $15,000 bond cost. Representative Ellison responded that it would be approximately $150 per year. He said that he was not sure if the bond had to be renewed each year.

Senator Regan asked if this was the same type of bonding that was removed earlier this session from several other laws. Mr. Roger Tippy answered that he did recall it being removed from the Warm Air Heating codes. Senator Lowe said that surety bonds were simply bonds taken out on a persons honesty, giving some guarantee of that honesty to the people.

Senator Regan asked Mr. Tippy to call a bonding company to find out what type of bonds are required. Representative Ellison commented that he had checked with the Secretary of State and Mr. Leonard Larson said that he saw no reason why the operator of the cemetary could not be bonded in this way. He saw no difficulty in handling this.

Senator Regan said that she would like to find out more about what an surety bond does and would therefore like to defer action on this bill until that information was available.

CONSIDERATION OF HOUSE BILL 764: Representative Jack Ramirez, chief sponsor of the bill, testified that this problem was brought to his attention by the Legislative Council staff from the recoding process and also by the County Treasurer in Yellowstone County. There are presently two sets of sales laws now in effect in Montana, an 1895 law and a 1955 enactment. The differences include: 1) the 1895 law applies to all merchandise while the 1955 law applies only to new merchandise; 2) the 1895 requires a $5000 bond while the 1955 law required bond double the value of the property to be sold; 3) the 1895 law required that the operator get a license with the County Clerk to hold an auction while the 1955 required the operator to be licensed with the County Treasurer in order to sell goods.

Representative Ramirez stated that he had used the 1895 law and

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Peter Jackson, Executive Director of WETA. He stated in regard to Northern Tier Pipeline Company, they came and wanted to become a member of their organization. They discovered a number of things that didn't happen on the Alaskan Pipeline. They showed them their maps, plans, etc., and they have done a good job in this regard. In regard to the facility at Puget Sound, Weta of Washington has gone into that in great detail and has found they are mature and are sound and will do a good job. He stated there will be at least 400 jobs in construction. There will be a good work force in the maintenance and operation and even more important it represents the smooth flow of energy into our area. It does protect the refineries to keep them going. He stated they favor this bill very strongly.

Don Allen, Montana Petroleum Association, stated he supports this resolution offered by Senator Lowe. He handed out a magazine called "The Wellhead." (Exhibit #2) He stated there is an article in this issue that deals with this particular problem. He stated Canada's National Energy Board has announced they are cutting back 25% the crudes coming into this country. Part of the problem is the fact that the National Energy Board in Canada is anxious to have some heavy crude exported to the United States. The National Energy Board in Canada is extremely resistant to providing additional light crude oil until such time as some agreement is reached whereby the United States refineries are permitted to take the total volume of heavy crude that Canada wishes to export. The heavy crude oil, however, cannot be brought into Montana as there are no pipelines from that field. Therefore, this oil along with much of the other heavy oil from Canada must be moved eastward into the Minnesota-Chicago area which then further worsens the problems which exist everywhere in the U.S. as far as an excess of asphalt which comes from the heavy crudes.

He stated members are proposing various routes. This will be an economic decision when it is made. We are going to have to have more crude oil and we better find a way to get it here. All of the proposals that are being looked at will serve the Montana refineries. He asked the Commitee to give this bill favorable consideration.

Senator Lowe stated that this is a timely and worthy resolution and hopes that we can take action and worry about the joint resolution in the House later.

Senator Goodover made a motion that SR 4 Be Adopted. Senator Kolstad seconded. All were in favor.

EXECUTIVE ACTION ON HOUSE BILLS WHICH HAVE ALREADY HAD HEARINGS:

HOUSE BILL 760

Senator Lowe moved that this bill Be Not Concurred In. Senator Goodover seconded. All were in favor.

HOUSE BILL 742

Senator Regan made a motion that this be passed for the day. All were in favor.

HOUSE BILL NO. 760

INTRODUCED BY ELLISON, COX

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE PROTECTION OF PERSONS DEALING WITH CEMETERY OR MAUSOLEUM-COLUMBARIUM CORPORATIONS AND TO INSURE THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS BY THOSE CORPORATIONS; AMENDING SECTION 86-701, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Bond~~ SURETY ~~BOND required of cemetery and mausoleum-columbarium corporations. (1) Each association organized for any purpose for which an association may be formed under Title 9, chapter 1, or Title 9, chapters 5 through 10, and transacting business in Montana shall file a~~ SURETY bond with the secretary of state in the amount of ~~$15,000 to assure the full and timely performance of its contractual obligations including but not limited to:~~

~~(a) delivery of caskets, urns, monuments, and other merchandise;~~

~~(b) provision of vaults or tombs;~~

~~(c) inurnment, entombment, or interment of remains; AND~~

~~(d) care, maintenance, or improvement of plots, tombs, urn, gardens, or other structures or grounds used for the disposition of human remains; and~~

~~(e) (1) the proper management and preservation of all funds entrusted to it.~~

~~(2) Any person injured or aggrieved by the failure to fulfill such obligations may bring suit on the~~ SURETY bond ~~in person or by his duly appointed representative.~~

~~(3) The secretary of state may charge and collect a fee of $10 for receiving and recording the~~ SURETY bond.

~~(4) If for any reason the~~ SURETY bond ~~is cancelled, invalidated, or diminished, all powers and privileges granted to the association as an entity by the state of Montana are suspended until the~~ SURETY bond ~~is fully reinstated. However, the suspension does not affect the rights of persons who deal with such association, in good faith and without notice of the suspension, during the period of suspension.~~

SECTION 1. SECTION 86-701, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"86-701. Contract for prearranged funeral plan or related services -- trust created. In all cases when, prior to his death, a person, or someone in his behalf, makes a contract for the final disposition of his body, under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the

professional services of a funeral director, ~~or~~ embalmer, cemetery firm, or mausoleum-columbarium corporation will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party. Accruals of interest upon this money are subject to this same trust. Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot."

SECTION 2. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON ITS PASSAGE AND APPROVAL.

-End-